SUPREME COURT, U. S.
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In The
Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-965

MORAN SHIPPING COMPANY AND SULPHUR CARRIERS CORPORATION,

Petitioners,

vs.

MAURO EVARISTO BLANCO,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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In The
Supreme Court of the United States

OCTOBER TERM, 1973

No.

MORAN SHIPPING COMPANY AND SULPHUR CARRIERS CORPORATION,

Petitioners,

vs.

MAURO EVARISTO BLANCO,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Moran Shipping Company and Sulphur Carriers Corporation, Petitioners, pray that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on August 20, 1973.

CITATIONS TO OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Fifth Circuit, printed in Appendix "B" is not yet officially reported.

The Opinion of the United States Court of Appeals for the Fifth Circuit, denying the Petition for Rehearing and Petition for Rehearing En Banc, printed in Appendix "A" is not yet officially reported. The Opinion of the Judge of the United States District Court, Middle District of Florida, was not officially reported.

JURISDICTION

The Judgment and Opinion of the United States Court of Appeals for the Fifth Circuit was dated August 20, 1973.

The Petition for Rehearing and Petition for Rehearing En Banc was denied by the United States Court of Appeals for the Fifth Circuit on November 8, 1973. Pursuant to timely Motion by Petitioners, the United States Court of Appeals for the Fifth Circuit has stayed the mandate to and including December 27, 1973.

The jurisdiction of this Court is invoked pursuant to Title 28, Section 1254(1) USCA.

QUESTION PRESENTED

1. Whether a Venezuelan seaman alleged to be injured aboard his Liberian flag vessel and represented by two members of the Bar can execute a valid and binding Release of his rights.

2. Whether the Court of Appeals can constitutionally consider matters outside the record and reverse a District Judge based upon matters not of record or before either Court.

3. Whether it is justifiable and binding precedent today, to hold that a modern day seaman is a "Ward of the Court," when he has been represented by two members of the Bar at the time he executed a Release for personal injuries and the seaman presently attempts to set same aside.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fifth Amendment, United States Constitution.

2. The statute under which Respondent filed suit, although nothing turns on its terms, was 46 USCA §688, (Jones Act), which provides as follows:

Recovery for injury to or death of seaman

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. Mar. 4, 1915, c. 153, § 20, 38 Stat. 1185; June 5, 1920, c. 250, § 33, 41 Stat. 1007."

STATEMENT OF THE CASE

Plaintiff served as a solderer and welder aboard the SS "POCHTECA". Plaintiff was a Venezuelan national and the vessel was one of Liberian registry. While aboard the vessel at Tampa, Florida during July, 1967 Plaintiff was injured. A period of hospitalization at Tampa ensued and after the hospitalization was concluded Plaintiff rejoined the vessel at Jacksonville, Florida.

At Jacksonville, Plaintiff retained a member of the Florida Bar, William C. Bostwick. Mr. Bostwick had been a member of the Florida Bar since February of 1952. Mr. Bostwick obtained a medical report from Tampa General Hospital physicians, Fernandez and Konnell. Further, Bostwick also obtained a report from Dr. Hook of Jacksonville reflecting that Plaintiff's "disability . . . is no longer present and . . . vision is again normal."

During September, 1967, Plaintiff left Florida to return to his country. Mr. Bostwick continued corresponding with Plaintiff and Plaintiff with his counsel. Further, Mr. Bostwick continued negotiations with Defendants' counsel and successfully secured posting of Bond therefrom. Negotiation resulted in a settlement of $1,000.00 being transmitted to Mr. Bostwick by the Defendants. Mr. Bostwick took two actions at that time. He had the file reviewed by another member of the Florida Bar in his office to confirm his opinion and further referred the matter to associated counsel, Victor Raymos, a member of the Florida Bar.

Victor Raymos, at times material, had been a member of the Florida Bar for twelve years. He was born in Cuba and was fluent in Spanish. He wrote to Plaintiff and received

letters from Plaintiff in Spanish. Mr. Raymos wrote to Plaintiff indicating that Mr. Bostwick had associated him in the case and that he, Mr. Raymos, had examined the file and that, considering all factors, the matter should be settled for $1,000.00.

Plaintiff corresponded to Mr. Raymos indicating that he would accept the $1,000.00 on the condition that the company, i.e., Defendants, would perform plastic surgery on his face. However, Mr. Raymos in a direct and forthright fashion wrote to Plaintiff on October 29, 1968 in Spanish and stated unequivocally that the $1,000.00 would be a complete settlement and that nothing further would be paid and there would be no operation. So that there would be no misunderstanding of his advices, Mr. Raymos indicated to Plaintiff to sign at the bottom of the letter, thereby accepting the terms of the letter, and instructed Plaintiff to return the letter to him so that he would be authorized to accept the settlement offer. Plaintiff returned the letter with the acceptance executed, mailing same from Caracas, Venezuela.

Thereafter, Mr. Raymos received the check from Defendants with the accompanying Releases. The Releases were submitted by Plaintiff's counsel to Honorable Morris B. Bernbaum, the Ambassador of the United States in Caracas, for execution. Plaintiff appeared at the American Embassy and the Embassy reported to Mr. Raymos that Plaintiff needed further assistance in executing the Release. In order to avoid any misunderstanding it was suggested to Mr. Blanco that he bring his own translator to the Embassy. Plaintiff in fact brought his own interpreter, Ramulo Moeller, and the Release was executed at the American Embassy before three witnesses, and in the presence of Plaintiff's own translator. The Release was certified to have been interpreted to Plain-

tiff by Plaintiff's own translator, the aforementioned Mr. Moeller.

The monies were thereupon forwarded to Plaintiff's counsel and thence to Plaintiff. The Plaintiff received the money.

From April, 1969 until November, 1971, the matter was dormant until suit was filed in the United States District Court.

In November, 1971, Plaintiff filed suit for injuries resulting from the July, 1967 accident. Plaintiff was represented by a member of the Florida Bar with a member of the New York Bar appearing of counsel. Suit was filed in the United States District Court in and for the Middle District of Florida, Jacksonville Division.

Among other defenses, Defendants alleged that Plaintiff had freely executed the aforementioned Release concerning the July, 1967 accident. Defendants further deposed the members of the Florida Bar who had represented Plaintiff throughout the settlement negotiations. At neither deposition was Plaintiff's present counsel in attendance.

Defendants moved for Summary Judgment and the Court granted same pursuant to its Order and Opinion of March 22, 1973. On that date, Judgment was entered in favor of Moran Shipping Company and Sulphur Carriers Corporation and the action dismissed on the merits (Appendix D).

The United States Court of Appeals for the Fifth Circuit reversed (Appendix B).

REASONS FOR GRANTING THE WRIT

A. A RELEASE EXECUTED BY A SEAMAN REPRESENTED BY TWO COMPETENT ATTORNEYS, WHERE THE SEAMAN AND ATTORNEYS ACT WITH LEGAL AND MEDICAL ADVICE CONSTITUTES A BINDING RELEASE AS A MATTER OF LAW.

The Ruling of the United States Court of Appeals for the Fifth Circuit effectively makes settling a seaman's case impossible. If representation by two competent counsel is not enough, indeed what must it take?

The test of *Garrett v. Moore*, 317 U.S. 239 (1942) is not achieving the impossible, but merely securing an assurance that the seaman has a "full understanding of his rights" and is not mistreated. The reason for the rule arose from the days of wood ships and hardships, where overreaching by the shipowner was most possible. The reason for the rule, set forth in *Garrett* was never to be interpreted so as to make good faith, fair handed negotiations impossible. But such an impossibility will result under the Opinion of the United States Court of Appeals for the Fifth Circuit.

The Opinion of the United States Court of Appeals for the Fifth Circuit is in conflict with fair and reasonable interpretations of seaman's rights, such as appears in *Gilbert v. United States of America*, 479 F.2d 1267 (2nd Cir., 1973). In that case, Plaintiff seaman, one Gilbert, attempted to set aside a settlement on the basis that same was not authorized. The United States Court of Appeals for the Second Circuit stated that where express authority is given, an attorney may compromise the matter and same is binding upon his principal. The trial court was affirmed.

The Respondent seaman herein was adequately and amply represented by two members of the Florida Bar during his settlement negotiations. The trial court had depositions of both counsel before the court in making the initial decision. The Respondent retained, in Jacksonville, counsel of twenty years experience and the court found him to be most competent. Since Respondent spoke Spanish and saw fit to return home to Venezuela, the Jacksonville counsel obtained additional counsel on behalf of Respondent and sought Spanish-speaking and Cuban-born counsel so as to better communicate and advise on the merits of Respondent's claim.

The matter for this Court to consider and the reason to grant this Writ is to determine whether or not a seaman's cause of action may be compromised. Must a vessel owner require to be included the direct communications between the seaman's attorneys and the client seaman? Must vessel owners allow each and every case to go to trial and result in Judgment by a court or jury before a matter is concluded?

Unless this Court rules on this matter the decision of the Fifth Circuit leads to confusion, misinterpretation, lack of uniformity and more litigation by seamen.

The decision of the United States Court of Appeals for the Fifth Circuit is in conflict with the case relied upon by the District Judge herein. In *Sitchon v. American Export Lines, Inc.*, 113 F.2d 830 (2d Cir., 1940), *cert. denied*, 311 U.S. 705 (1940) the United States Court of Appeals for the Second Circuit recognized that when a seaman executes a release and acts upon the advice of an attorney, the release should not be set aside. That Court in affirming a trial court's Summary Judgment held that a reasonable policy basis for this ruling was that "if such a settlement as the one in

the case at bar is voided, no release by a seaman could ever be free from attack, if he subsequently discovers that his injuries were greater than he had anticipated when executing the release".

A substantial period of time has elapsed since this Court has directed its attention to the question of seamen's releases. The lack of uniformity that will abound by the Fifth Circuit decision as well as the confusion that will result therefrom commend that the Court grant this Writ and fully review the decision of the United States Court of Appeals for the Fifth Circuit concerning this vital issue.

B. THE OPINION OF THE COURT OF APPEALS IS ERRONEOUS AND AT VARIANCE WITH THIS COURT'S DECISION IN THAT THE COURT UNCONSTITUTIONALLY CONSIDERED MATTERS OUTSIDE THE RECORD AND REVERSED THE DISTRICT JUDGE ON MATTERS NOT IN THE RECORD BEFORE EITHER COURT.

In the instant suit, the Plaintiff sued on theories of general maritime law, Jones Act and Liberian law (alleging in the Complaint that Liberian law was the same as American general maritime law). The United States Court of Appeals and its Opinion (Appendix "B") set forth what, to it, was a critical factor: The fact that Plaintiff had propounded Interrogatories concerning Liberian law and that same had not been answered. The record reflects that this is untrue. There were never any Interrogatories filed or served and therefore none that went unanswered. This basis for the decision made by the United States Court of Appeals and upon which their Opinion turns was never part of this case.

We respectfully suggest that if indeed justice be what is fair and what is truthful, then the decision of the United States Court of Appeals must be reversed.

This Court in *Thomson v. Gaskill*, 315 U.S. 442 (1942) stated that the review of a District Court's determination concerning jurisdictional amount *must* be confined to the record before the Court on appeal.

This past rule of law was not followed by the United States Court of Appeals for the Fifth Circuit.

In *New Haven Inclusion Cases*, 399 U.S. 392 (1970), the Supreme Court of the United States refused to consider matters that were not in the record as evidence.

The United States Court of Appeals refused to follow this recent rule of law.

In *Drake v. General Finance Corporation of Louisiana*, 119 F.2d 588 (5th Cir., 1941), the United States Court of Appeals held that the Court can consider nothing save what is stated in the record sent up from the trial court.

The United States Court of Appeals did not follow its own rule of law.

The constitutional protection afforded the Petitioners by the Fifth Amendment can certainly not be met when one considers the reliance by the United States Court of Appeals upon matters outside the record so as to vacate and remand a case to the District Judge concerning a release entered into with the advice of two competent attorneys.

C. THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT IS IMPROPER SINCE SEAMEN SHOULD BE AFFORDED NO FURTHER PROTECTION THAN ANY OTHER PERSON.

In days of Justice Story sitting on circuit in 1823 deciding the case of *Harden v. Gordon,* 2 Mason 541 (CC, 1823) Fed Case No. 6047, one can conjure up a most accurate mental picture of persons who were entitled to be "wards of the admiralty". In that day of wooden ships, sails, minimal education and lack of collective bargaining, certainly this was a category or class of persons who had no one to look to other than the courts or government as a protector. The status of a seaman before the world in general, and even the courts, was not an enviable one. For example, Dana, *Two Years Before the Mast* (1840) (Doubleday & Co., 1959), it was accurately stated at Page 353 in discussing the seaman's plight:

> "It is to be considered, also, that the sailor comes into court under very different circumstances from the master. He is thrown among landlords, and sharks of all descriptions; is often led to drink freely; and comes on the stand unaided, and under a certain cloud of suspicion as to his character and veracity."

Today, however, with the technical equipment aboard modern-day vessels has come technical persons possessing highly sophisticated skills and abilities. Their education unlike one hundred and fifty years ago, would exceed that of the "man on the street" who receives no special recognition or treatment as a "ward". In its decision of the instant case, the United States Court of Appeals for the Fifth Circuit,

failed to recognize this fact, thereby allowing the law of seamen and seamen's releases to remain static and antiquated.

Competent attorneys are readily available to seamen, as indeed they are to an increasing segment of the American community. Further, seamen are able to have the benefits of collective bargaining which have increased their well-being and standing in the community.

The traditional "ward of the admiralty" has mentally, intellectually and socially grown up, and he can no longer be considered a "ward". The law of this land should recognize that fact and the law applied in the instant case as to Petitioners and Respondent should be no different than any state law or appropriate federal law such as the Federal Employers' Liability Act, 45 USCA §51-60.

For this reason, we respectfully urge the Court to grant this Writ to review the law of seamen's releases and to modernize the law in this vital area of admiralty.

CONCLUSION

The United States Court of Appeals misinterpreted *Garrett, supra,* and entered its decision in conflict therewith and in conflict with other circuits. Further, the United States Court of Appeals improperly relied upon matters not in the record. Further, the matter of releases executed by seamen should be equally treated with other releases executed by non-seamen. For these reasons, a Writ of Certiorari should issue.

Respectfully submitted,

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Jacksonville, Florida 32202

By.....
JAMES F. MOSELEY
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to GERALD SOHN, ESQUIRE, Post Office Box 104, Jacksonville, Florida; THOMAS M. BREEN, ESQUIRE, 160 Broadway, New York, New York 10038; and upon CHARLES R. MALONEY, ESQUIRE, 822 Richards Building, New Orleans, Louisiana 70112, by United States Mail this ——— day of December, 1973.

.....

JAMES F. MOSELEY

Attorney for Petitioners,
Moran Shipping Company and
Sulphur Carriers Corporation

APPENDIX

APPENDIX "A"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 73-2130

MAURO EVARISTO BLANCO,
Plaintiff-Appellant,

versus

MORAN SHIPPING COMPANY and
SULPHUR CARRIERS CORPORATION,
Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Florida

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ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

(Opinion Aug. 20, 1973, 5 Cir., 1973, ... F. 2d .....).

November 8, 1973)

Before WISDOM, AINSWORTH and CLARK,
Circuit Judges.

PER CURIAM: The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service

on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.

APPENDIX "B"

IN THE
United States Court of Appeals
FOR THE FIFTH CIRCUIT

No. 73-2130
Summary Calendar*

MAURO EVARISTO BLANCO,
Plaintiff-Appellant,

versus

MORAN SHIPPING COMPANY and
SULPHUR CARRIERS CORPORATION,
Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Florida

---

(August 20, 1973)

Before WISDOM, AINSWORTH and CLARK,
Circuit Judges.

CLARK, Circuit Judge: Summary judgment at the hands of the district court, based upon an exceptionally strong written release of all claims ended this seaman's action by

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*Rule 18, 5th Cir.; see Isbell Enterprises, Inc. v. Citizens Casualty Co. of N.Y., 431 F.2d 409, Part I (5th Cir. 1970).

Blanco. The motion for summary judgment was based upon depositions by the attorneys who represented Blanco at the time he gave the release. Counter-affidavits were submitted by Blanco and by one of his present attorneys.

The issue is framed in the language of the classic test set out in *Garrett v. Moore-McCormick Company*, 317 U.S. 239, 248, 63 S.Ct. 246, 252, 87 L.Ed. 239, 245 (1942):

> . . . the burden is upon one who sets up a seaman's release to show that it was executed freely, without deception or coercion, and that it was made by the seaman with a full understanding of his rights. The adequacy of the consideration and the nature of the medical and legal advice available to the seaman at the time of signing the release are relevant to an appraisal of this understanding.

This circuit has paraphrased the *Garrett* test in this language:

> . . . the burden is on the party setting up the seaman's release to show that it was given by the seaman with an informed understanding of his rights and a full appreciation of the consequences of his release.

Cates v. United States, 451 F.2d 411, 414 (1971).

The shipboard accident giving rise to this action occurred on July 24, 1967 in Tampa, Florida waters and resulted in Blanco's hospitalization in Tampa General Hospital. Following his discharge from this hospital, Blanco went to Jacksonville, Florida where his ship was then in dry dock and came under the care of a doctor there. He subsequently was released from the ship and thereupon employed a Jacksonville attorney who spoke and understood only English. Blanco

spoke and understood only Spanish. To make communications more difficult, Blanco subsequently returned to his native Venezuela. When a settlement offer eventuated, Blanco's English-speaking attorney deposed:

> I wrote Mr. Blanco in April of 1968 that I needed to get a statement from him as to how his injuries were currently bothering him, what sums he owed for doctors and medicines, the number of times he has been treated by a physician since the first of February.
>
> I don't think I ever got any intelligent reply to that. Every letter I had was not responsive to it, but I believe about the time I associated Victor Ramos in the case and – I'm certain I did by October, 1968.
>
> I see one letter that is translated by Mr. Ramos. It says, and this is from Blanco – "as of this moment I have no report."

Victor Ramos, referred to in this testimony, is another Jacksonville attorney who was associated by Blanco's first counsel because of Ramos' literacy in both Spanish and English. The deposition given by Ramos similarly appears to have been based solely upon the medical reports covering the Tampa hospitalization or the Jacksonville doctor's treatment.

In his counter-affidavit, Blanco swears that he had accident-related plastic surgery at the University Hospital in Caracas, Venezuela in January, 1969 which was shortly prior to the consummation of the settlement. He further avers that when settlement was first advised by his then attorneys, he demurred because he needed additional surgery and did not

want to bear the expense himself. He also inconsistently declared under oath in the same affidavit that he did not understand the legal effect of the release and executed it because he thought it represented no more than a receipt for his wages aboard ship. The other counter-affidavit, by one of Blanco's present counsel, contends that Blanco may have a right of action under Liberian law because of the vessel's registry and an additional action under American law because the vessel might be a "flag of convenience vessel." The affidavit of counsel further swears that he must have the answers to previously filed but yet unanswered interrogatories to know whether Blanco possessed this additional potential claim at the time he was advised to settle – information which would go to the adequacy and efficacy of the legal advice he then received.

The district court utilized the correct legal test from *Garrett*. The applying it to the facts the court found that there was no genuine issue as to Blanco's understanding of the nature and legal effect of the release that he executed or as to the fact that Blanco had intimate knowledge of the various medical procedures which had been performed on his own face. The court also found Blanco had been afforded "adequate legal advice." The problem lies in this latter finding. The depositions of counsel show that their advice to Blanco was given without knowledge of his Venezuelan surgery. Counsel Ramos described the medical report he examined as "very mild." The last report referred to by Blanco's English-speaking counsel was dated September 7, 1967. Obviously if counsel were not aware of the subsequent surgical procedures and their costs and sequelae or any prognosis for further surgery, they were in no position to advise their client as to the adequacy of the proposed settlement. There similarly remains unresolved at this point in this cause the

legal status of any dual Liberian-American claim Blanco may be able to assert, it is simply unknown whether either counsel was aware of such potential claim or took it into account in arriving at their evaluation.

Giving Blanco the benefit of all reasonable doubts in determining whether a genuine issue of material fact exists [*see* C. Wright, Federal Courts 443 (2d ed. 1970)] we must say on the basis of this summary judgment record that such an issue remains and must be tried. Without the slightest intent of intimating any decision on the merits, we vacate the summary judgment entered herein and remand this cause for further proceedings not inconsistent with this opinion.

VACATED and REMANDED.

APPENDIX "C"

United States Court of Appeals
FOR THE FIFTH CIRCUIT

October Term, 1972

No. 73-2130
Summary Calendar

D. C. Docket No. CA 71-944-J-S

MAURO EVARISTO BLANCO,
Plaintiff-Appellant,

versus

MORAN SHIPPING COMPANY and
SULPHUR CARRIERS CORPORATION,
Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Florida

Before WISDOM, AINSWORTH and CLARK,
Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here or-

dered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, vacated; and that this cause be, and the same is hereby remanded to the said District Court in accordance with the opinion of this Court;

It is further ordered that defendants-appellees pay to plaintiiff-appellant the costs on appeal to be taxed by the Clerk of this Court.

August 20, 1973

Issued as Mandate:

APPENDIX "D"

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 71-944-Civ-J-S

MAURO EVARISTO BLANCO,
Plaintiff,

v.

MORAN SHIPPING COMPANY and
SULPHUR CARRIERS CORPORATION,
Defendants.

Filed Ocala, Florida March 22, 1973

ORDER AND OPINION

Plaintiff, a merchant seaman, seeks damages pursuant to the Merchant Marine (Jones) Act, 46 U.S.C. § 688, for personal injuries suffered in the course of his employment. The defendants move for a final summary judgment on the basis of an accord and satisfaction in the nature of a full release executed by the parties.

Plaintiff was injured on June 24, 1967, while attempting to unclog certain sulphur pipes aboard the SS POCHTECA on which he was employed as a solderer and welder. The sulphur was emitted from the valves and burned the plain-

tiff's face and eyes. The same day he was admitted, at the Moran Shipping Company's expense, to Tampa General Hospital where he remained an inpatient for 15 days. The diagnosis was second degree burns of the face, eyelids, conjunctiva and cornea. The doctor's prognosis was that the plaintiff would "do very well as far as his eyes are concerned."

The Moran Shipping Company then sent the plaintiff to another doctor in Jacksonville for further treatment. After plaintiff's discharge from employment, he returned to Venezuela where plastic surgery was done on his face. Plaintiff claims that he still suffers from pains in his eyes and headaches and that he needs additional plastic surgery.

The plaintiff executed releases for the amount of $1,000.00 when he was in Venezuela. These plenary releases form the basis for the defendants' motion for summary judgment. The plaintiff's response to this motion is that the said releases were not valid and therefore without legal effect. The plaintiff bases his conclusion on his contention the release was not fair and was not based on competent medical and legal advice as is required by the leading case of *Garrett v. Moore-McCormack Co.*, 317 U. S. 239 (1942). That case held that "the burden is on the one who sets up a seaman's release to show that it was executed freely, without deception or coercion, and that it was made by the seaman with a full understanding of his rights. The adequacy of the consideration and the nature of the medical and legal advice available to the seaman at the time of signing the release are relevant to an appraisal of this understanding." *Id.* at 248.

That the plaintiiff was afforded adequate legal advice is supported by the depositions of the two attorneys, Mr. William C. Bostwick and Mr. Victor Ramos, who advised the

plaintiff in his negotiations with the defendants prior to the execution of the releases. The plaintiff initially solicited the legal advice of Mr. Bostwick concerning his rights in regard to his injuries. Mr. Bostwick filed a libel on the plaintiff's behalf in this Court in 1967, No. 67-626-Civ-J. In order to avoid any misunderstanding due to the language barrier, Mr. Bostwick associated Mr. Victor Raymos, a Cuban-born attorney, who wrote and spoke both Spanish and English fluently. Both of these attorneys, who were admittedly able and experienced members of The Florida Bar, advised the plaintiff to accept $1,000.00 as "a good settlement" considering certain factors: the cost of having Mr. Blanco come to Florida to attend trial and his expenses during the trial and on the legal opinion of these two lawyers that there was no guarantee that a jury would award him more than $1,000.00.

Mr. Raymos deposed that the release was executed in the presence of the United States Ambassador to Venezuela, witnesses, a notary public, an interpreter and Mr. Blanco's own interpreter. This was not controverted by any of the affidavits submitted by the plaintiff.

The plaintiff's contention that he did not understand the legal nature and effect of the release is contradicted by the plaintiff's own affidavit which states that he initially would not sign the release because he thought he needed plastic surgery. After Mr. Raymos advised him that the company would not pay for the plastic surgery he decided to sign it anyway. If Mr. Blanco did not understand that he was relinquishing all of his rights against the company he would not have attached such a condition to the execution of the release in the first place. Therefore, this Court holds that there is no genuine issue of material fact that Mr. Blanco understood the legal nature and effect of the releases which he executed.

As to the nature of the medical advice available to Mr. Blanco at the time of the execution of the release, the affidavits and exhibits attached to the pleadings clearly indicate that the paintiff was fully apprised of the nature, status and effects of the injuries which he sustained as a result of the accident. Mr. Blanco executed the releases on April 21, 1969, almost two years after the injuries were sustained. He had been examined and treated by physicians on two separate occasions in Tampa and Jacksonville, Florida, in 1967, and had plastic surgery performed on his face in Caracas, Venezuela, in January 1969, only three months prior to the execution of the releases. With the benefit of all this medical treatment, Mr. Blanco cannot honestly assert that he was lacking in adequate medical advice at the time he executed the releases. Therefore, this Court holds that there is no genuine issue of material fact as to the sufficiency or adequacy of the medical advice available to Mr. Blanco at the time he signed the releases.

As to the adequacy of the consideration, it is uncontroverted that Mr. Raymos and Mr. Bostwick fully apprised the plaintiff of the countervailing economic considerations which militated against proceeding to trial: the costs of travel to the United States for the plaintiff, the living expenses incident to his sojourn here during the trial, as well as the lack of any assurance that a jury would render a verdict for more than $1,000.00. Under these circumstances, the plaintiff cannot seriously contend that he was overreached economically. His interests were fully and ably represented by two experienced members of The Florida Bar. Therefore, this Court further holds that there is no genuine issue of material fact as to the adequacy of the consideration amidst the various countervailing considerations presented to the plaintiff.

As a result of the foregoing analysis, it seems clear that the release in question was executed freely, without deception or coercion, and that it was made with a full understanding of the plaintiff's rights. The mere fact that the plaintiff was disappointed in the payment received after payment of attorneys' fees cannot alter the legal effect of the instrument involved.

This case seems to be controlled by the following language in *Sitchon v. American Export Lines, Inc.*, 113 F. 2d 830, 832 (2d Cir. 1940):

> "It is a different thing to uphold a settlement by a seaman in which the compensation paid for his injuries is adequate and the only advice he has received is that of the physician of the employer where, as here, he has the advice of his own doctor and lawyer whose only bias would probably be in his own favor. If such a settlement as the one in the case at bar is voidable, no release by a seaman could ever be free from attack, if he subsequently discovered that his injuries were greater than he anticipated when executing the release.
>
> "When a seaman has made a settlement after full investigation and with independent advice, we can see no ground for holding it invalid. The question in any case is whether the seaman, if he is acting alone, has intelligence enough fully to understand the situation and the risk he takes in giving up the right to prosecute his claim or whether, if he is acting under advice, that advice is disinterested and based on a reasonable investigation. Here the seaman and his attorney before making the settlement relied on two examinations by the Marine Hospital and the defendant made no separate examination. Each party entered into a settlement

based on identical information and conducted in the fairest manner."

In the case *sub judice*, the plaintiff was assisted by two independent attorneys and several doctors in deciding whether to sign the release.

It is well settled that unless there are circumstances showing that the seaman lacked a full appreciation of his rights, that he was under economic duress or was overreached in any respect, a release may not be set aside. *McBrien v. United States Petroleum Carriers, Inc.*, 177 F. Supp. 627 (S.D. N.Y. 1959). As the foregoing analysis has disclosed, the plaintiff's own statements belied his asserting that he did not fully appreciate the rights which he relinquished. In addition, the plaintiff's affidavits did not disclose the slightest taint of fraud, duress, coercion or overreaching.

This Court realizes that a "seaman" is a ward of the Court and defenses to a seaman's claim based upon a prior release or settlement must be looked upon with extreme care and scrutiny. It is also true that the defendant has the burden of showing that such defenses were fair and equitable to the seaman. *Garrett v. Moore-McCormack Co.*, 317 U. S. 239 (1942). Because of the independent legal and medical advice afforded the plaintiff, the defendants have met this burden. *See Sitchon v. American Export Lines, Inc.*, 113 F. 2d 830 (2d Cir. 1940); *McBrien v. United States Petroleum Carriers, Inc.*, 117 F. Supp. 627 (S.D. N.Y. 1959); *Corneaux v. Two-R Drilling Co.*, 236 F. Supp. 735 (E.D. La. 1964); *Flener v. Waterways Oil Company*, 261 F. Supp. 740 (W.D. Tenn. 1966). On the facts presented in the affidavits and exhibits, this Court concludes that there is no genuine issue of material fact as to the fairness and equitable nature of the release in

question and that a final summary judgment is proper. *Corneaux v. Two-R Drilling Co., supra; Hassan v. A. M. Landry & Son, Inc.*, 321 F. 2d. 570 (5th Cir. 1963), *cert. denied* 375 U. S. 967 (1964).

Therefore, it is

ORDERED:

The defendants' motion for final summary judgment is GRANTED.

DONE AND ORDERED at Ocala, Florida, this 22nd day of March, 1973.

/s/ CHARLES R. SCOTT
Judge

CC Gerald Sohn, Esquire
James F. Moseley, Esquire

APPENDIX "E"

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 71-944-Civ-J-S

MAURO EVARISTO BLANCO,
Plaintiff,

v.

MORAN SHIPPING COMPANY and
SULPHUR CARRIERS CORPORATION,
Defendants.

Filed Ocala, Florida March 22, 1973

JUDGMENT ON DECISION BY THE COURT

It is

ORDERED AND ADJUDGED:

That the plaintiff take nothing, that this action be dismissed on the merits, and that the defendants Moran Shipping Company and Sulphur Carriers Corporation recover of the plaintiff Mauro Evaristo Blanco their costs of action.

DONE AND ORDERED at Ocala, Florida, this 22nd day of March, 1973.

/s/ CHARLES R. SCOTT
Judge

APPENDIX "F"

United States Court of Appeals
FOR THE FIFTH CIRCUIT

No. 73-2130

MAURO EVARISTO BLANCO,
Plaintiff-Appellant,

versus

MORAN SHIPPING COMPANY and
SULPHUR CARRIERS CORPORATION,
Defendants-Appellees.

Filed November 27, 1973

ON CONSIDERATION OF THE APPLICATION of the Appellees in the above numbered and entitled cause for a stay of the mandate of this Court therein, to enable Appellees to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, IT IS ORDERED that the issuance of the mandate of this Court in said cause be, and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that certiorari petition has been filed. IT IS FURTHER ORDERED that the Clerk shall issue the mandate upon the

filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

/s/ CHARLES CLARK
UNITED STATES CIRCUIT JUDGE

LIBRARY
SUPREME COURT, U. S.

FILED
MAR 7 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-965

MORAN SHIPPING COMPANY AND SULPHUR CARRIERS CORPORATION,

Petitioners

versus

MAURO EVARISTO BLANCO,

Respondent

REPLY ANSWER TO THE PETITION FOR WRIT OF CERTIORARI BY MAURO EVARISTO BLANCO

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73-965

MORAN SHIPPING COMPANY AND SULPHUR CARRIERS CORPORATION,

Petitioners

versus

MAURO EVARISTO BLANCO,

Respondent

REPLY ANSWER TO THE PETITION FOR WRIT OF CERTIORARI BY MAURO EVARISTO BLANCO

Mauro Evaristo Blanco, respondent, prays that the U. S. Supreme Court for the United States refuse to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, for the following reasons:

JURISDICTION

The jurisdiction of this Court is proper pursuant to Title 28, Section 1254, (1), U.S. C.A.

QUESTION PRESENTED

The respondent, Mauro Evaristo Blanco, denies that the questions presented to this Court are as outlined in the petition for writ of certiorari of Moran Shipping Company and Sulphur Carriers Corporation. Instead, the respondent avers the only valid issue that was involved in the judgment of the district court was: "Is the release, printed in English, signed by a seaman, a complete bar to any further claim by this seaman, who does not read and write English?"

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The respondent, Mauro Evaristo Blanco, does not concur that the Fifth Amendment, to the United States Constitution, represents any issue involved in this matter. On the contrary, Mauro Evaristo Blanco submits the following statutes are involved:

(a) The Jones Act, 46 U. S. C. 688;

(b) Rule 38 of the Federal Rules of Civil Procedure;

(c) Rule 56 of the Federal Rules of Civil Procedure.

STATEMENT OF THE CASE

Mauro Evaristo Blanco can agree with the statement of the case as announced by the petitioners, in some instances, but instead, the respondent avers these are the facts:

(1) The seaman, Mauro Evaristo Blanco, originally brought this action against the shipowner as a result of an accident of July 24, 1967, when employed as a solderer or welder

aboard the SS POCHTECA, a foreign vessel moored to the dock in Tampa, Florida. The vessel's chief engineer had ordered the seaman to loosen a valve at the same time the chief engineer was heating pipe that led to the same valve. Hot, liquid sulphur came through the valve in two streams, seriously burning the face, eyelids, conjunctiva and comea of the seaman. Members of the crew transported the seaman to the Tampa General Hospital, where he remained an inpatient from July 24, 1967 through August 8, 1967. Subsequent to discharge from the Tampa Hospital, Blanco traveled to Jacksonville, Florida, by bus, where he met the SS POCHTECA, which was in dry dock. While in Jacksonville, the shipowners arranged for a doctor, chosen by the shipowners, to give treatment and cure to Blanco for approximately thirty days. Then, when the SS POCHTECA was released from dry dock, medical treatment of the seaman stopped. The seaman remained on the vessel for one further trip from Jacksonville to Mexico and back to Jacksonville. Thereafter, the seaman returned to his home in Venezuela.

Apparently, some time prior to returning to Venezuela, the seaman had Mr. William C. Bostwick to represent him. However, this representation presented problems: Mr. Bostwick did not speak, read or write Spanish, and the seaman, Mr. Blanco, did not speak, read or write English. In representing the seaman, Mr. Bostwick in either October of 1967, as indicated at Page 8 of his deposition, or in October of 1968, as indicated on Page 9 of his deposition, negotiated a "settlement" of the seaman's case. But, apparently, as indicated in the deposition of Mr. William Bostwick at the bottom of Page 8/top of Page 9, and also at the bottom of Page 9/top of Page 10, of the deposition, depending upon whether the settlement negotiations by

Bostwick were commenced and concluded on October of 1967 or October of 1968, there presented difficulty between the lawyer and client. The client asked his lawyer for legal aid in Spanish. In any event, as per Page 7 of the deposition of Mr. Victor Raymos, he was associated by Mr. Bostwick and on September 9, 1968, he, Mr. Raymos, wrote a letter in Spanish to the seaman, Mr. Blanco, urging the seaman to accept $1,000.00 for injury. At Page 8 of his deposition, Mr. Raymos was of the opinion that the injuries of the seaman were "very mild and that it didn't show any serious injuries, and that it indicated that he was recovering very well, very nicely from his injuries." On October 8, 1968, the seaman replied in writing that he would accept $1,000.00 on the condition that the shipowner would be responsible for the plastic surgery of his face. Notwithstanding the revelation of needed plastic surgery on his face, the lawyer, Victor Raymos, and apparently the lawyer, William C. Bostwick, if he was consulted, continued to assume that the injuries of the seaman were "very mild, not serious, recovering very well, very nicely . . .". Mr. Raymos reiterated his recommendation that Blanco settle the case for $1,000.00 and requested that the seaman sign the bottom of his letter to indicate that he understood the full terms of the settlement agreement. The testimony of Mr. Raymos indicates that the bottom of the letter was signed and returned to him. Thereafter, a Red Ink Release, printed and written in English, was sent to Caracas, Venezuela, to the office of the Honorable Morris B. Bernbaum, the ambassador of the United States in Caracas, where apparently his office assisted in obtaining a release executed by the seaman. However, with reference to the execution of this release in Caracas, Venezuela, in the office of the ambassador, there is peculiar testimony

on the part of the defendant witness, Mr. Victor Raymos, at Page 12 of his deposition, which indicates:

> "I also enclosed a check made out to the attorney and Mr. Blanco, which Mr. Blanco should endorse on the back. So we sent these things to the ambassador, the American ambassador in Caracas, and then I received an answer back from the ambassador saying that Mr. Blanco had visited the embassy this morning, but he was not clear however that Mr. Blanco fully understands the significance of the release of all rights, although they were explained to him in Spanish."

Notwithstanding the absence of communication, Victor Raymos, sounding like an adversary, rather than counsel for the seaman, testified further on Page 12 of the deposition:

> "In order to avoid a misunderstanding at a later date it was suggested to Mr. Blanco that he bring his own translator to the embassy. So he promised to do that. So he did that.
>
> And on April the 9th, 1969 I got another letter from the embassy in Caracas and it said Mr. Blanco appeared at the embassy with his own interpreter, a fellow by the name of R-a-m-u-l-o M-o-e-l-l-e-r, and he found everything in order, but they needed $7.50 for the notarial fee.
>
> So we sent them the $7.50.
>
> Then finally on April 22nd I got a letter back from the embassy saying: I have your letter of April the

15th and the $7.50 to cover the consular notarial fee and I am enclosing the three releases of all rights forms completed and endorsed by Mr. Blanco and his interpreter, Mr. Moeller, as well as a $1,000.00 check endorsed by the claimant."

At the time of signing the release Blanco was in debt, owing the University Hospital in Caracas, Venezuela, for plastic surgery performed on his face January 8 through January 14, 1969. From July 24, 1967 through 1968 and 1969, Blanco was unable to work or secure employment because of poor vision and headaches. In 1970 Blanco did obtain employment as a street peddler in Caracas, earning enough money to eat, for less than earned as a seaman.

In 1971 a seaman complaint, pursuant to the Jones Act (46 U.S.C. 688) was filed in the U. S. District Court for the Middle District of Florida, Jacksonville Division, claiming damages as a result of negligence, unseaworthiness, failure to render prompt and proper medical treatment, maintenance and cure, transportation, earned and unearned wages. The shipowners filed an answer, admitting the jurisdiction of the Court, denying all allegations of fault. In the alternative, the shipowner alleged that the negligence of the plaintiff was the sole, proximate cause of his injuries, and as a sixth defense, the shipowners pleaded a release signed April 21, 1969.

A copy of the release was filed in the record, and this release clearly indicates that the same is written entirely in English, apparently written by three employees of the American embassy in Caracas, Venezuela and notarized by Betty Ann Hogander, consul of the United States of America. In furtherance of their defense, the shipowners filed a

motion for a summary judgment, submitting the depositions of William Bostwick and Victor Raymos in support of this summary judgment. Thereafter, the District Court rendered a judgment in behalf of the shipowners, dismissing the cause of the seaman. From that judgment, Blanco appealed to the Fifth Circuit Court of Appeals and was favored with a judgment of the appellate court vacating and remanding this matter back to the District Court as of August 20, 1973. Thereafter, in an en banc hearing, the Fifth Circuit Court of Appeals denied a petition for rehearing on November 8, 1973.

ERRORS OF THE U. S. DISTRICT COURT

The U. S. District Court for the Middle District of Florida, Jacksonville Division, rendered a summary judgment in behalf of the shipowner on March 22, 1973, discussing the judgment in a "order and opinion" that should be reviewed in the history of this case. The District Court below either held or suggested the following:

(a) The injuries of the plaintiff were insignificant;

(b) The shipowners discharged their duty for "cure" to the seaman merely by paying for 15 days hospitalization at the Tampa General Hospital;

(c) The shipowner meets the test required by Garrett v. Moore McCormick Co., 317 U.S. 239 (1942) merely by establishing that the seaman was represented by a bona fide attorney at the time he signed the release;

(d) That representation by counsel is coincidental and equal to adequate counseling;

(e) That merely the form, without regard of content, of taking depositions from two attorneys who represented the seaman, establishes satisfactorily to Rule 56 of the F.R.C.P. that no genuine issue of fact existed between the shipowner and the seaman.

(f) And in furtherance of mere form over content, it must be assumed that the U. S. Ambassador to Caracas, Venezuela, was a witness and gave approval to the satisfactory manner in which a release was obtained from the seaman, in spite of testimony of Mr. Victor Raymos;

(g) And lastly, the mere form of signing the release is above all, superior to the content of the release, in spite of the verbiage in the release, or the fact that it was written in English by a seaman who did not speak English.

PROCEDURE BEFORE THE U. S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

In the appeal from the United States District Court for the Middle District of Florida to the United States Court of Appeals for the Fifth Circuit, the seaman, Mauro Evaristo Blanco, through counsel, presented a brief to the appellate court, outlining a statement of the case, essentially as has herein been outlined to the United States Supreme Court. As indicated in the reply brief of Blanco to the United States Court of Appeals, the brief of

the shipowner made no quarrel with the outline of facts as given by the appellant, Blanco. In addition to the absence of quarrel with the facts as outlined by Blanco, the shipowner also had little quarrel with Blanco's exceptions to the seven points (a through g) concerning the order and opinion of the District Court below.

In the original brief of Blanco, the aforementioned points (a through g) were outlined as the holding or suggestions of the United States District Court below. It was suggested by Blanco to the appellate court that the absence of comment as to the errors as outlined by Blanco (a through g) represented that the shipowner conceded that the lower Court was in error on these points, as outlined by Blanco.

Instead of challenging the brief of the appellant, Blanco, before the United States Court of Appeals for the Fifth Circuit, instead of disputing any facts or disputing the appellant's seven-point (a through g) analysis of the District Court's judgment and order, the shipowner presented a brief to the United States Court of Appeals which merely re-urged more emphatically that "representation by counsel is coincidental and equal to adequate counseling" and that the "mere form of signing a release is above all, superior to the content of the release, in spite of the verbiage in the release and in spite of the fact that the release was worded in English, and signed by a seaman who did not speak English." The written opinion of Judges Wisdom, Ainsworth and Clark for August 20, 1973, for the United States Court of Appeals either held or indicated the following:

(a) The appellate court did not agree the plaintiff's injuries were insignificant;

(b) That even in 1968, in the course of settlement negotiations, there was still a problem of continuing cure as noted by the Fifth Circuit in that opinion:

"When settlement offer eventuated, Blanco's English-speaking attorney deposed:

I wrote Mr. Blanco in April of 1968 that I needed to get a statement from him as to how his injuries were currently bothering him, what sums he owed for doctors and medicines, the number of times he has been treated by a physician since the first of February.

I don't think I ever got any intelligent reply to that. Every letter I had was not responsive to it, but I believe about the time I associated Victor Ramos in the case and - I'm certain I did by October, 1968.

I see one letter that is translated by Mr. Ramos. It says, and this is from Blanco - 'as of this moment I have no report'."

(c) Obviously, the Fifth Circuit Court of Appeals did not feel that the shipowner met the test required by Garrett v. Moore McCormick Co., 317 U.S. 239 (1942), by virtue of their specific quote from the case:

. . . the burden is upon one who sets up a seaman's release to show that it was executed freely, without deception or coercion, and that it was made by

the seaman with a full understanding of his rights. The adequacy of the consideration and the nature of the medical and legal advice available to the seaman at the time of signing the release are relevant to an appraisal of this understanding.

This circuit has paraphrased the Garret test in this language:

. . . the burden is on the party setting up the seaman's release to show that it was given by the seaman with an informed understanding of his rights and a full appreciation of the consequences of his release.

Cates v. United States, 451 F. 2d 411, 414 (1971).

(d) A review of the last three paragraphs of the opinion of the Fifth Circuit Court of Appeals would bear evidence that this appellate court was satisfied there was at least an issue of fact as to whether or not Blanco received adequate counseling prior to signing a release.

(e) Consider the quotes from the deposition as specifically quoted by Blanco to the Court of Appeals and also consider those excerpts from the deposition that the Court of Appeals, itself, quoted, it is submitted that the appellate court felt that the depositions of the two attorneys, who previously represented the seaman, did not establish satisfactorily to Rule 56 of the Federal Rules of Civil Procedure that a genuine issue of fact existed between the shipowner and the seaman;

(f) It is obvious that the Fifth Circuit Court of Appeals, like counsel for Blanco, cannot concur that the U. S. Ambassador to Caracas, Venezuela, was a witness and/or gave approval to any alleged satisfactory manner in which a release was obtained from Blanco;

(g) And lastly, the release, itself, written in English and signed by a seaman who did not speak English, at the very least presented a question of fact to be tried before the jury pursuant to Rule 38 of the F. R. C. P.

REASONS FOR DENYING THE WRIT AND/OR FOR AFFIRMING THE DECISION OF THE APPELLATE COURT BELOW

The shipowner, in its reasons for granting a writ, has made the following comments:

(1) If representation by two competent counsel is not enough, indeed what must it take?

(2) The test of Garrett v. Moore McCormick Co., 317 U.S. 239 (1942) is not achieving the impossible . . . the reason for the rule, set forth in Garrett was never to be interpreted, so as to make good faith, fair-handed negotiations impossible;

(3) Must a vessel owner require to be included in the direct communications between the seaman's attorney and the client's seaman?

(4) The decision of the Fifth Circuit leads to confusion, misinterpretation, lack of uniformity and more litigation by seamen;

(5) The decision of the United States Court of Appeals for the Fifth Circuit is in conflict with the case relied upon by the District Judge herein.

(6) It is predicted that this decision of the Fifth Circuit will cause a lack of uniformity in case law, as well as confusion concerning the validity of release;

(7) There is a dispute raised by the shipowner as to whether or not interrogatories propounded to the shipowner were filed and served.

(8) The shipowner urges this Court to reject the traditional idea of "words of the admiralty" and to "modernize the law" in this vital area of admiralty.

(1)

If representation by two competent counsel is not enough, indeed what must it take?

In the depositions of the two attorneys, as well as in the "Order and Opinion" of the District Court below, there is a conspicuous absence of any discussion, revelation or suggestion as to what type, if any, counseling was afforded Blanco by either the lawyer who did not speak Spanish or the Spanish-speaking lawyer, who recommended the seaman accept $1,000.00 to settle all claims. Counseling of a client necessarily goes beyond merely recommending a settlement. A phonograph record can do that. In the instant case, there were outstanding claims in behalf of the seaman pertaining to maintenance, cure, transportation, earned wages, unearned wages, damages

via negligence and/or damages via unseaworthiness. There is a total absence of any discussion by the Court below or the deposed lawyers concerning these aspects of counseling. The judgment of the Fifth Circuit Court of Appeals recognizes this:

As Courts frequently do, the U. S. District Court below, probably without reading the deposition submitted by the shipowner, assumed the contentions of the shipowner merely because the shipowner took and produced the depositions. However, any superficial reading of the deposition on the contrary proves that the deposition taken by the shipowner does not establish the thesis of the shipowner. The shipowner did not meet the test required by Garrett v. Moore McCormick Co., supra. A superficial reading of these two depositions of the two members of the Bar does not bear out this burden. In fact, the depositions reveal the following:

(a) The seaman was conversant with Spanish, but not English;

(b) Mr. Bostwick was conversant with English, but not Spanish;

(c) In September or October of 1967, Mr. Bostwick received an offer of $1,000.00 from the shipowners and/or their insurers and thereafter for approximately one year, in spite of language barriers, he attempted to coerce and persuade the seaman to accept this offer;

(d) After one year, in September or October of 1968, Mr. Bostwick, for his convenience, associated Mr. Victor Raymos, who never met or spoke to the seaman in person, but instead corresponded with him by letter and

> then only to persuade the seaman to accept the offer of $1,000.00.

Contrary to the opinion of the District Court below, there is an absence of evidence in the record to indicate that either attorney was experienced and/or conversant in handling personal injury claims and more particularly, admiralty personal injury claims.

(2)

> The test of Garrett v. Moore McCormick Co., 317 U. S. 239 (1942) is not achieving the impossible . . . the reason for the rule, set forth in Garret was never to be interpreted, so as to make good faith, fair-handed negotiations impossible.

In proceeding before the Fifth Circuit Court of Appeals, the shipowner heretofore urged strongly that the United States Ambassador to Caracas, Venezuela was a witness and gave approval to the satisfactory manner in which a release was obtained from the seaman. Apparently, the briefs of the seaman and the opinion of the Fifth Circuit Court of Appeals have convinced the shipowner of the error of their ways, inasmuch that before this United States Supreme Court, this argument has apparently been considerably de-emphasized. But, since the District Court below placed emphasis on the allegation that the U. S. Ambassador was a "witness and gave approval to the satisfactory manner in which the release was obtained from the seaman", and since this argument was heretofore urged to the appellate court below, it is submitted that the U. S. Supreme Court should also review this aspect of the case.

Perhaps the greatest error of the District Court below is contained in its reference to the United States Ambassador to Venezuela, especially on Page 3 of the "Order and Opinion", when the Court reports:

> "Mr. Raymos deposed that the release was executed in the presence of the United States Ambassador to Venezuela, witnesses, a notary public, an interpreter and Mr. Blanco's own interpreter. This was not controverted by any of the affidavits submitted by the plaintiff."

Pages 11 and 12 of the depositions of Mr. Victor Raymos, the attorney associated by Mr. Bostwick, do not verify that the United States Ambassador to Caracas was a witness to the execution of this release. A review of the release, itself, indicates a conspicious absence of the Ambassador's name and there is no testimony in the record, whatsoever, that verifies that the United States Ambassador was in any wise a witness to the release. On the contrary, reference to the United States Ambassador by Mr. Victor Raymos does not bear out that the seaman had a full understanding of the release when he was signing. On the contrary, in spite of the Court's opinion, the testimony of Mr. Victor Raymos pertaining to the United States Ambassador reveals:

> "So we sent these things to the ambassador, the American ambassador in Caracas, and then I received an answer back from the ambassador saying that Mr. Blanco had visited the embassy this morning, <u>but he was not clear however that Mr. Blanco fully understands the significance of the release of all rights, although they were explained to him in Spanish</u>."

This is the only reference of testimony in the Court record to the ambassador and thus, contrary to the opinion of the District Court below, the ambassador of the United States of America for Venezuela did not bear witness, as reported by the District Court.

In this respect, it is submitted that this clear-cut error by the United States District Court warranted the appellate court to find that the test of Garrett v Moore McCormick Co., 317 U. S. 239 (1942) was not met.

(3)

Must a vessel owner require to be included in the direct communications between the seaman's attorney and the client's seaman?

This is a defense or peudo-defense that the shipowner has not heretofore raised. But now that it is raised, the seaman, Blanco, must submit to the Court that the claim of the seaman was obviously more complicated and more involved than reported by either Mr. Bostwick or Mr. Raymos. Obviously, Mr. Bostwick was unable to counsel his client at all. Coming to Mr. Raymos, his counseling was confined and restricted to merely a recommendation of settlement, coupled with the arrangements that Blanco should make to protect the shipowner with a release. There is no indication in either attorney's deposition that they counseled Blanco on any of the following:

(a) His rights under the Jones Act;

(b) His rights under general maritime law, including the warranty of seaworthiness, concerning the explosion;

(c) The company's obligation under general maritime law to afford Blanco maintenance, transportation and cure, notwithstanding any damage claim he may have;

(d) His right to claim earned wages in any Court, in any country, pursuant to general maritime law and his right under the American law for penalty wages;

(e) His right to make claim for unearned wages;

(f) The fact that his claim for cure itself would exceed the $1,000.00 offer made thereto;

(g) That his probable claim for maintenance was in excess of the $1,000.00 offer;

(h) That his probable claim for earned wages and/or unearned wages was in excess of the $1,000.00 offer;

(i) That his claim for damages was in excess of the $1,000.00 offer.

And while Mr. Victor Raymos may have been of the opinion that the injuries of facial scarring, temporary, partial and/or permanent blinding were mild, non-serious injuries, the shipowner, itself, must have known and/or as a matter of law should have known that these injuries, as damages or as unearned wages, or as maintenance or as cure, were more than $1,000.00 being offered.

(4)

The decision of the Fifth Circuit leads to confusion, misinterpretation, lack of uniformity and more litigation by seamen.

Garrett v. Moore McCormack, Inc., supra, does not lead to confusion, misinterpretation, lack of uniformity and/or more litigation by seamen. Since 1942, it merely presents a rule which is sometimes followed to protect seamen who are at an economical, intellectual and educational disadvantage when attempting to negotiate with a shipowner.

(5)

The decision of the United States Court of Appeals for the Fifth Circuit is in conflict with the case relied upon by the District Judge herein.

There was obviously a language barrier involved in the instant case, which automatically made this case not a proper candidate for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. While the order and opinion of the District Court below, as well as the briefs of the shipowner, are conspicuous by their silence concerning the language barrier, this particular problem of the language barrier in this particular case stands out. Unlike the District Court, the appellate court below took particular notice of this language barrier. Moreover, while the Judge from the District Court below had not talked to Mauro Evaristo Blanco, the ambassador of the United States to Caracas, Venezuela, did and according to the shipowner witness, Mr. Raymos, did make a report concerning the lack

of understanding of Blanco concerning the release, even though the same was delivered to him in Spanish. Apparently, the District Court below, like the two attorneys, Mr. Bostwick and Mr. Raymos, did not read the release. The release, itself, should be read. It is a standard Red Ink Release used by shipowners and P & I insurers. It is the same type of Red Ink Release referred to in Thompson v. Coastal Oil Co., 119 F. Supp. 838 (DC NJ 1954), rev'd on other grounds, 221 F. 2d 559 (CA 3), aff'd. 350 U. S. 956, 76 S. Ct. 345, vacated on rehearing on other grounds, 350 U. S. 985, 76 S. Ct. 471, rev'd on other grounds, 352 U. S. 862, 77 S. Ct. 90. Seamen who can read and write English have difficulty with the release. To quote the bottom of Page 9, in the deposition of Mr. Bostwick:

> "It was a complicated release form."

By its terms, the release should not have been used for a Spanish-speaking seaman. At the top of the release, it is plainly imprinted:

> "READ CAREFULLY - BY SIGNING THIS YOU GIVE UP EVERY RIGHT YOU HAVE."

This phrase is in English, but Blanco could not read English.

Going to the middle of the release, the printed part reads:

> "READ THE FOLLOWING SIX NUMBERED STATEMENTS CAREFULLY."

Blanco could not read the six numbered statements. This release form should not have been used for this foreign seaman. At

the very least, the release should have been written in Spanish.

By its own terms, this release printed in English offers an issue of fact. In English, the following is printed:

"THE FOLLOWING IS TO BE FILLED IN BY THE CLAIMANT HIMSELF IN HIS OWN HANDWRITING.

A. Have you read this paper from beginning to end? A. _____

B. Do you know what this paper is that you are signing? A. _____

C. What is this paper which you are signing? A. _____
(Write here 'release of everything')

D. Do you make the six numbered statements printed above and do you intend that the parties who you are releasing shall rely on the statements as the truth?
A. _____

E. Do you know that the signing of this paper settles and ends EVERY right or claim you have for DAMAGES as well as for past and future maintenance, cure and wages? A. _____

F. In order to show that you know what you are doing, please copy in your own handwriting, in the space immediately following, the third numbered statement above which is printed in red ink.

_____"

This type of release was not printed for a foreign seaman. Blanco could not read the same from the beginning to end. The document, itself, cannot represent verification that Blanco knew what paper he was signing.

In the extremely poor copy of the release in the Court record, observed by counsel prior to preparing this brief, the written part, completing the blanks in the release, are "illegible". Moreover, reviewing these handwritten parts as best as the same can be reviewed, it appears that there is more than one type of handwriting in the course of completing the face side of the release.

(6)

It is predicted that this decision of the Fifth Circuit will cause a lack of uniformity in case law, as well as confusion concerning the validity of releases.

The seaman, Blanco, submits the shipowner's attack upon Garrett v. Moore McCormack Co., Inc., supra, is unwarranted.

(7)

There is a dispute raised by the shipowner as to whether or not interrogatories propounded to the shipowner were filed and served.

The (B) part of the Petition for Writ of Certiorari as filed by the shipowner is an innovation, for which counsel for Blanco engaged for this appellate procedure is unable to answer, having no copy of the record

present. Relying upon memory it is the undersigned counsel's best recollection that there were interrogatories filed in the record, which were propounded to the shipowner.

(8)

> The shipowner urges this Court to reject the traditional idea of "wards of the admiralty" and to "modernize the law" in this vital area of admiralty.

The (C) part of the Petition for Writ of Certiorari, as urged by the shipowner, is purely argumentative. On the contrary side, the politically weak, like Blanco, other laborers, mechanics, farmers, longshoremen and seamen can contrary-wise argue that they are in no wise equal in bargaining positions with any insurance company or any shipowner or any stevedore, to bargain for rights and benefits under the law, or under a contract. They need help and aid in some shape or form. The "ward of the admiralty" theory which is sometimes followed by courts is an equitable theory. It is true laborers, sharecroppers, miners, and other politically weak persons quite frequently as a matter of common law, do not enjoy any protection of the law when they have been over-reached. But, is that to say we should follow the lower standard, so as to make all persons "equal"? Perhaps, the contrary is true and all Courts at all times should protect all parties to guard against any being over-reached.

CONCLUSION

The United States Court of Appeals reviewed, analyzed and evaluated the facts and issues at hand more so than the District Court below. There was no misinterpretation of Garrett, supra, by this appellate court.

It is urged that this United States Supreme Court either deny the petition for writ of certiorari or instead affirm the decision and judgment of the United States Court of Appeals for the Fifth Circuit, vacating the judgment of the district court below and remanding this case back to the District Court below for a trial on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Mr. James F. Mosely, c/o Messrs. Toole, Taylor, Mosley, Gabel & Milton, Suite 1014 Barnett Bank Building, Jacksonville, Florida 32202, mailed this 7th day of March, 1974.

CHARLES R. MALONEY